

Harbor Construction Company, Inc.; Peninsula Metal Structures, Inc.; Pac West, Inc., et al.; Bruce Beard, individually; Bruce Beard d/b/a Peninsula Metal Structures; Bruce Beard d/b/a Pac West; Bruce Beard d/b/a Harbor Construction Company, Inc., et al. and Seattle District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO; Darrell Dewayne Bash; Lonnie Bash. Cases 19-CA-12824, 19-CA-13483, 19-CA-12904, and 19-CA-12905

December 7, 1981

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

On July 1, 1981, counsel for the General Counsel filed in the instant cases a Motion for Summary Judgment and To Transfer Cases to the Board alleging that Harbor Construction Company, Inc.; Peninsula Metal Structures, Inc.; Pac West, Inc., et al.; Bruce Beard, individually; Bruce Beard d/b/a Peninsula Metal Structures; Bruce Beard d/b/a Pac West; Bruce Beard d/b/a Harbor Construction Company, Inc., et al., hereinafter called Respondent, constitute a single employer, and that, as such, it had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (3), and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended. A copy of the motion was sent by certified mail to each entity named as Respondent. On July 9, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause, granting Respondent until July 23, 1981, to respond to the motion. On July 29, 1981, 6 days past the filing deadline, Bruce Beard, individually, and Pac West, Inc., hereinafter called Beard and Pac West, respectively, filed a motion requesting that the Board deny the General Counsel's motion, and permit Beard and Pac West to file an answer to the complaint, or permit them to file a response to the Notice To Show Cause.

The proceeding was originated by a charge in Case 19-CA-12824 filed on October 1, 1980,¹ by Seattle District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, hereinafter called the Union, against Peninsula Metal Structures, hereinafter called Peninsula, alleging that Peninsula had violated Section 8(a)(5) and (1) of the Act by repudiating the parties' collective-bargaining agreement. A copy of the charge was sent by certified mail to Peninsula at its business address, 131 Second Avenue South,

Edmonds, Washington. On November 12, the Union amended the charge to include Harbor Construction Company, hereinafter called Harbor, as a Respondent. The amended charge was sent by certified mail to Harbor at the same Second Avenue address listed for Peninsula.

On October 27, Darrell Dewayne Bash filed a charge in Case 19-CA-12904 alleging that Peninsula had violated Section 8(a)(3) and (1) of the Act by discharging him because he cooperated with the Union and by refusing to pay him the wages required by the collective-bargaining agreement Peninsula had with the Union. He amended the charge on November 12 to include Harbor as a Respondent. Both the original and amended charges were sent by certified mail to Peninsula and Harbor at their Second Avenue address.

On October 27, Lonnie Bash filed a charge in Case 19-CA-12905 alleging that Peninsula had violated Section 8(a)(3) and (1) of the Act by laying him off because he "joined with" the Union and by refusing to pay him in accordance with the parties' collective-bargaining agreement. He amended the charge on November 10 to include Harbor as a Respondent. Peninsula and Harbor were sent copies of the original and amended charges by certified mail at their Second Avenue address.

On November 13, the Regional Director for Region 19 ordered the consolidation of these three cases and issued a consolidated complaint and notice of hearing. The consolidated complaint alleges, *inter alia*, that Peninsula and Harbor are a single integrated enterprise and/or are *alter egos*, and that Peninsula and Harbor had violated Section 8(a)(1), (3), and (5) of the Act in the manner set forth in the charges. The consolidated complaint was served by certified mail on Peninsula and Harbor.

On January 20, 1981, the attorney assigned to the cases by the Region wrote the following letter:

Bruce Beard, President
Harbor Construction Company
Peninsula Metal Structures
131 Second Avenue South
Edmonds, Washington 98120

RE: Harbor Construction Company
Peninsula Metal Structures
19-CA-12824, 19-CA-12904,
19-CA-12905

Dear Mr. Beard:

My records indicate that you have not filed an answer to the complaint issued in the above cases on November 13, 1980. The Rules and Regulations of the National Labor Relations

¹ All dates herein are in 1980 unless otherwise indicated.

Board requires that answers to complaints be filed within 10 days of their issuance.

Please be advised that an answer to the consolidated complaint must be filed within this office within 10 days of the date of this letter, or this office will be forced to seek a summary judgment against your companies.

If I can be of assistance in this matter, please do not hesitate to contact me.

Sincerely yours,
Cora M. Vaughn
Attorney

On April 15, 1981, the same attorney wrote this second letter:

Bruce Beard, President
Harbor Construction Company Peninsula
Metal Structure[sic]
131 Second Ave. So.
Edmonds, WA 98020

RE: Harbor Construction Co./
Peninsula Metal Structures
Case Nos. 19-CA-12824, 19-CA-12904, 19-
CA-12905

Dear Mr. Beard:

As you were advised telephonically on April 15, 1981, unless an Answer to the Complaint issued in the above referenced cases are [sic] received in this office by Friday, April 17, this office will move for a Summary Judgment in those cases.

My records indicate that you are not represented by Counsel in these cases. If you retain Counsel, please advise me accordingly.

As I previously advised you, it would be mutually beneficial if these cases were settled outside of trial. Thus, in the event you now wish to discuss settlement possibilities, or require my assistance, please contact me at 442-5693.

Sincerely yours,
Cora Vaughn
Attorney

On April 22, 1981, the Union filed a charge in Case 19-CA-13483 naming Harbor, Peninsula, "Pac West, Inc., et al.; Bruce Beard, Individually; Bruce Beard d/b/a Harbor Construction Company, Bruce Beard d/b/a Peninsula Metal Structures, Bruce Beard d/b/a Pack [sic] West, Inc., et al." as Respondent. The charge alleges that Respondent had violated Section 8(a)(5) and (1) of the Act by repudiating the collective-bargaining agreement in a number of specified ways. The charge also al-

leges that the "Employer is currently operating under the name Pac West, Inc.," and that "Pac West is a joint employer or alter-ego of Harbor Construction Company and Peninsula Metal Structures." The charge further alleges that "[a]ll of the above companies are either owned or managed by Bruce Beard." A copy of this charge was sent by certified mail to the Second Avenue address listed for Respondent on the charge.

On June 4, 1981, the Regional Director for Region 19 issued a second order consolidating cases and consolidated complaint and notice of hearing. The second consolidated complaint alleges that "Respondents Peninsula, Pac West, Harbor, Bruce Beard and any other companies that have been or may be formed by Respondent Bruce Beard to disguise the continuation of Harbor are, and have been at all times material herein, *alter egos* and a single employer within the meaning of the Act." The second consolidated complaint also alleges that "Respondents Harbor, Peninsula and Pac West have common ownership, common supervision, interchangeability of employees and equipment and centralized control of labor relations policies." The violations alleged in this second consolidated complaint are identical to those alleged in the first consolidated complaint. Return receipts for service of the second consolidated complaint show that service was made in the names of Peninsula and Harbor at the Second Avenue address listed on the charge.

On July 1, 1981, counsel for the General Counsel filed a Motion for Summary Judgment and To Transfer Cases to the Board. The motion restates the history of the proceedings, summarizes the alleged violations, and further alleges that, since January 5, 1981, counsel for the General Counsel sought to communicate personally by telephone and letter with Respondent's president, Bruce Beard, regarding the need for prompt compliance with the requirement for filing an answer. The motion also alleges that Respondent had neither filed an answer nor requested an extension of time to file an answer. A "Certification of Nonfiling of Answer," made by the Acting Regional Director for Region 19, certified that Respondent had neither filed an answer nor requested an extension of time. The certificate of service attached to the motion shows individual service by certified mail on Peninsula, Harbor, Pac West, and Beard.

On July 9, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause, granting Respondent until July 23, 1981, to answer the motion. Harbor and Peninsula failed to respond, while on July 29, 1981, Beard and Pac West filed their motion seeking

leave to file an answer to the complaint, or to respond to the Notice To Show Cause, and requesting that the Board deny the General Counsel's motion.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

Beard and Pac West argue that their motion should be granted because their admitted failure to meet the deadlines for filing was excused by "confusion, lack of proper notice to them, and excusable neglect on their part and the part of their employees and agents in not recognizing that the nature of the case had changed with the addition of more parties." The motion also asserts that Beard never did business as Peninsula or Harbor, that Pac West is not a successor corporation to Harbor or an *alter ego* of Harbor or Peninsula, and that Beard and Pac West had a "valid and true defense." The motion also contends that neither Pac West, Inc., nor Bruce Beard, individually, were ever mailed a copy of the charge in Case 19-CA-13483 or of the second order consolidating the cases.

The return receipt and the letter mailed with the charge in Case 19-CA-13483 indicate that Beard and Pac West were not individually served with copies of the charge. Rather, it appears that one copy of the charge, which named Pac West and Beard, was mailed jointly to all those named as Respondent at the Second Avenue address. Similarly, the affidavit of service attached to the second order consolidating the cases names Peninsula and Harbor as receiving copies at the Second Avenue address, but does not list Beard or Pac West as individually receiving copies. Concerning the failure to respond to the second consolidated complaint, neither Beard nor Pac West claims that they had no notice of the charge and the complaint in Case

19-CA-13483. In fact, their motion, which requests that they be excused from their failure to respond to the second consolidated complaint by the June 18, 1981, deadline because of "excusable neglect on their part and the part of their employees and agents in not recognizing that the nature of the case had changed with the addition of more parties," essentially admits having received the documents here in issue. As to their failure to respond to the Notice To Show Cause by the July 23, 1981, deadline, Beard and Pac West offer no excuse whatsoever.

We note that copies of the charge and complaint in Case 19-CA-13483 were sent to Respondent's business address, 131 Second Avenue South.² Section 11(4) of the Act provides that "[c]omplaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served." There is no contention that Beard and Pac West did not share the Second Avenue business address, and, in fact, the affidavit of service attached to the General Counsel's Motion for Summary Judgment, which Beard and Pac West admit having received, shows service to Beard and Pac West at that address.

Accordingly, it appears that Beard and Pac West had actual notice and were served in accordance with the statutory requirements. Because they failed to respond in a timely manner to the complaint or to the Notice To Show Cause, or to demonstrate good cause for failing to do so, we hereby deny their motion. Furthermore, no good cause having been shown for Harbor's and Peninsula's failure to file an answer, the allegations of the complaint are deemed admitted and true, and we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Harbor and Peninsula are Washington corporations with an office and place of business in Edmonds, Washington, where they are engaged in the business of general construction. During the past 12 months, a representative period, Harbor and Peninsula had gross sales of goods and services

² The General Counsel's Motion for Summary Judgment, which Beard and Pac West do not deny having received, asserts that this Second Avenue address is Respondent's business address. Nowhere in Respondent's motion does it challenge this assertion.

valued in excess of \$50,000, and purchased and caused to be transferred and delivered to their facilities within the State of Washington goods and materials valued in excess of \$50,000 directly from sources outside that State or from suppliers within that State which in turn obtained such goods and materials directly from sources outside that State.

Pac West is a Nevada corporation with an office and place of business in Edmonds, Washington, where it is engaged in the business of general construction. During the past 12 months, a representative period, Pac West had gross sales of goods and services valued in excess of \$500,000, and purchased and caused to be transferred and delivered to its facilities within the State of Washington goods and materials valued in excess of \$50,000 directly from sources outside that State or from suppliers within that State which in turn obtained such goods and materials directly from sources outside that State.

Harbor, Peninsula, and Pac West have common ownership, common supervision, interchangeability of employees and equipment, and centralized control of labor relations policies.

Peninsula and Pac West were established by Beard as a subordinate instrument to and a disguised continuation of Harbor.

Peninsula, Pac West, Harbor, Bruce Beard, and any other companies that have been or may be formed by Beard to disguise the continuation of Harbor are *alter egos* and a single employer within the meaning of the Act, and have been at all times material herein.

We find, on the basis of the foregoing, that Harbor, Peninsula, Pac West, and Bruce Beard, are, and have been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Seattle District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. The Unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All employees employed by Respondent as journeymen or apprentice carpenters in the construction industry.

The Union has been the collective-bargaining representative of the employees in said unit since October 1972, and it continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Refusal To Bargain

Respondent has entered into successive collective-bargaining agreements with the Union since October 1972. The most recent collective-bargaining agreement is effective by its terms for the period June 1, 1977, to May 31, 1981. Since on or about June 5, 1980, Respondent has refused to apply the terms and conditions of the collective-bargaining agreement to, or to recognize the Union as the exclusive bargaining representative of, its employees working as journeymen or apprentice carpenters in the construction industry.

Accordingly, we find that, by the conduct described above, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

C. The Threat and the Discriminatory Discharges

In or about the month of June 1980, Respondent told employees that they could retain their jobs only if they agreed to work for below union scale wages.

Accordingly, we find that, by the conduct described above, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

In or about the month of June 1980, Respondent laid off or discharged employees Darrell Dewayne Bash and Lonnie Bash, and has failed and refuse to recall or reinstate them to their same or to substantially equivalent positions, because they joined or assisted the Union or otherwise engaged in union activities.

Accordingly, we find that, by the conduct described above, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with Respondent's operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several

States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5), (3), and (1) of the Act, we shall order that it cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

We will, *inter alia*, order Respondent to give effect to the terms and provisions of the collective-bargaining agreement retroactively to June 5, 1980. We will also order Respondent to make whole its employees for any losses they may have suffered as a result of Respondent's refusal to abide by that agreement, plus interest as set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), and *Florida Steel Corporation*, 231 NLRB 651 (1977).³

We will also order that Respondent make whole Darrell Dewayne Bash and Lonnie Bash for any losses they may have suffered because of Respondent's unlawful conduct in discharging or laying them off by paying them a sum equal to what each would have earned, less any net interim earnings, in accordance with *F. W. Woolworth Company*, 90 NLRB 289 (1950), plus interest as set forth above.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Respondent Harbor Construction, Inc.; Peninsula Metal Structures, Inc.; Pac West, Inc., *et al.*; Bruce Beard, individually; Bruce Beard d/b/a Peninsula Metal Structures; Bruce Beard d/b/a Pac West; Bruce Beard d/b/a Harbor Construction Company, Inc., *et al.*, is an employer engaged in commerce with the meaning of Section 2(6) and (7) of the Act.

2. Seattle District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Since on or about October 1972, and at all times material herein, the Union has been the designated exclusive collective-bargaining representative of Respondent's employees, pursuant to Section 9(a) of the Act, in the following appropriate unit:

All employees employed by Respondent as journeymen or apprentice carpenters in the construction industry.

4. In or about the month of June 1980, Respondent, at its construction site, violated Section 8(a)(1) of the Act by threatening its employees that they could retain their jobs only if they worked for below union scale wages.

5. At all times material herein, Respondent has refused to recognize the Union as the exclusive bargaining representative of its employees working as journeymen or apprentice carpenters, and has refused to apply the terms and conditions of the collective-bargaining agreement to its employees working as journeymen or apprentice carpenters, in violation of Section 8(a)(5) and (1) of the Act.

6. In or about the month of June 1980, Respondent, at its construction site, discharged or laid off Darrell Dewayne Bash and Lonnie Bash, and has failed and refused to recall or otherwise reinstate them to their same or substantially equivalent positions, because these employees joined or assisted the Union or otherwise engaged in union activities, in violation of Section 8(a)(3) and (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Harbor Construction Company, Inc.; Peninsula Metal Structures, Inc.; Pac West, Inc., *et al.*; Bruce Beard, individually; Bruce Beard d/b/a Peninsula Metal Structures; Bruce Beard d/b/a Pac West; Bruce Beard d/b/a Harbor Construction Company, Inc., *et al.*, Edmonds, Washington, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize and to bargain collectively regarding wages, hours, and other terms and conditions of employment with Seattle District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, as the exclusive bargaining representative of the employees in the following appropriate unit:

All employees employed by Respondent as journeymen or apprentice carpenters in the construction industry.

(b) Refusing to apply the terms and conditions of the collective-bargaining agreement with the Union effective from June 1, 1977, to May 31, 1981.

(c) Threatening its employees that they could retain their jobs only if they agreed to work for below union scale wages.

(d) Discharging or laying off its employees, and failing and refusing to reinstate them to their same

³ Member Jenkins would award interest on sums due under the Order herein based on the formula set forth in his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

or substantially equivalent positions, because they have joined or assisted the Union or otherwise engaged in union activities.

(e) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit described in paragraph 1(a) above regarding wages, hours, and other terms, and conditions of employment.

(b) Give effect to the terms and provisions of the collective-bargaining agreement retroactively to June 5, 1980.

(c) Make whole its employees for their loss of wages and other benefits which are provided for in the collective-bargaining agreement as provided in the section of this Decision entitled "The Remedy."

(d) Offer Darrell Dewayne Bash and Lonnie Bash immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(e) Make employees Darrell Dewayne Bash and Lonnie Bash whole for any loss of earnings due to the discrimination practiced against them in the manner set forth in the section of this Decision entitled "The Remedy."

(f) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Post at its Edmonds, Washington, facility copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 19, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken

by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Act gives all employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT refuse to recognize or to bargain collectively regarding wages, hours, and other terms and conditions of employment with Seattle District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, as the exclusive bargaining representative of our employees in the following appropriate unit:

All employees employed by us as journeymen or apprentice carpenters in the construction industry.

WE WILL NOT refuse to apply the terms and conditions of the collective-bargaining agreement with the Union effective from June 1, 1977, to May 31, 1981.

WE WILL NOT threaten our employees that they could retain their jobs only if they agreed to work for below union scale wages.

WE WILL NOT discharge or lay off our employees, and fail and refuse to reinstate them to their same or substantially equivalent positions, because they have joined or assisted the Union or otherwise engaged in union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL, upon request, bargain collectively with the Union as the exclusive representative

⁴ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

of the employees in the appropriate unit described above regarding wages, hours, and other terms and conditions of employment.

WE WILL give effect to the terms and provisions of the collective-bargaining agreement retroactively to June 5, 1980.

WE WILL make whole our employees for their loss of wages and other benefits which are provided for in the collective-bargaining agreement, plus interest.

WE WILL offer Darrell Dewayne Bash and Lonnie Bash immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions,

without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make employees Darrell Dewayne Bash and Lonnie Bash whole for any loss of earnings due to the discrimination practiced against them, plus interest.

HARBOR CONSTRUCTION COMPANY
INC.; PENINSULA METAL STRUCTURES, INC.; PAC WEST, INC., ET AL.;
BRUCE BEARD, INDIVIDUALLY;
BRUCE BEARD D/B/A PENINSULA METAL STRUCTURES; BRUCE BEARD D/B/A PAC WEST; BRUCE BEARD D/B/A HARBOR CONSTRUCTION COMPANY, INC., ET AL.